

**U.S. Department of Labor**

Office of Administrative Law Judges  
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San Francisco, CA 94103-1516

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(415) 625-2201 (FAX)



**Issue Date: 03 July 2012**

CASE NO.: 2011-TAE-00006

*In the Matter of:*

**PERI & SONS FARMS, INC.,**  
Respondent.

**ORDER APPROVING CONSENT FINDINGS**

This matter arises under the Immigration and Nationality Act of 1952, as amended by the Immigration Reform and Control Act of 1986. 8 U.S.C. §§ 1101 *et seq.*; 8 U.S.C. § 1101(a)(15)(H)(ii)(a). On June 12, 2012, this Office received an agreement signed by all parties, indicating that the parties had settled this claim on certain terms. The agreement complies with the relevant regulations, and settles all remaining issues between the parties. *See* 29 C.F.R. § 501.40; 29 C.F.R. § 18.9(b).

I have reviewed the terms of the parties' proposed consent findings. A copy of the findings is attached. The consent findings are APPROVED and adopted as part of this Order. The parties will comply with its terms. Per the terms of the agreement, this Office will retain jurisdiction in this matter until the Administrator provides this Office with a report that Respondent has made all payments due under this Order.

SO ORDERED.

A handwritten signature in black ink, appearing to read "S. B. Berlin".

STEVEN B. BERLIN  
Administrative Law Judge

2012-TAE-5

US DEPT OF LABOR  
ADMIN LAW JUDGES

2012 JUN 12 A 11:02

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OFFICE OF ADMINISTRATIVE LAW JUDGES  
UNITED STATES DEPARTMENT OF LABOR

In the Matter of:	) ADMINISTRATIVE PROCEEDING
	)
PERI & SONS FARMS, INC.,	) Case No. 2011 – TAE-000
	)
Respondent	) CONSENT FINDINGS
	)
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The parties to these proceedings, the Administrator, Wage and Hour Division, United States Department of Labor (the "Administrator"), and Respondent, PERI & SONS FARMS, INC. ("Peri & Sons"), hereby stipulate, agree and consent, pursuant to 29 C.F.R. § 501.40 to the entry of these Consent Findings and the entry of an Order based thereon without the need for a hearing.

1. This matter arises under Section 218 of the Immigration and Nationality Act, as amended by the Immigration and Reform Control Act of 1986 (8 U.S.C. §§1101(a)(15)(H)(ii)(a),

1184(c), and 1186) ("the Act") and the Regulations at 20 C.F.R. Part 655 and 29 C.F.R. Part 501 ("H-2A Implementing Regulations").

2. Upon written notices dated October 13, 2010, in accordance with 29 C.F.R. §§ 501.16, 501.19, and 501.31-32, the Administrator notified Respondent Peri & Sons of the back wages it found to be due and the Administrator assessed civil money penalties ("CMPs") for violations of the H-2A implementing regulations.

3. Within thirty days of the receipt of the aforesaid back wages and CMP notice, Respondent Peri & Sons made a timely request for a hearing on such back wages and CMPs, in accordance with 29 C.F.R. § 501.33.

4. After Peri & Sons made its timely request for a hearing, the Administrator amended its written notices of back wages owed and CMPs assessed on November 17, 2010, in accordance with 29 C.F.R. §§ 501.16, 501.19, and 501.31-32 to account for the new information that Respondent Peri & Sons provided to the Administrator.

5. Within thirty days of the receipt of the November 17, 2010, amended back wages and CMP notice, Respondent Peri & Sons made a timely request for a hearing on such back wages and CMPs, in accordance with 29 C.F.R. § 501.33.

6. In response to Respondent's November 17, 2010, letter, the Administrator, in a November 26, 2010, letter, amended its back wage assessment to \$2,338,699.60.

7. In June 2012, the Administrator filed an Order of Reference with the Office of Administrative Law Judges, referring this matter for hearing.

8. In consideration of the Administrator's commitments herein and in paragraph 9 in particular, Respondent Peri & Sons agrees:

a. to pay to the Administrator the sum of \$2,838,699.60. Of this sum, Respondent Peri & Sons agrees to pay the Administrator \$2,338,699.60 for unpaid back wages due to 1,365 H-2A workers. Further, Respondent Peri & Sons agrees to pay \$500,000.00 for CMPs;

b. to not contest the calculation of back wages due to the H-2A workers, as revised in the Administrator's November 26, 2010, letter, and not contest the Administrator's authority to collect back wages on behalf of H-2A workers under the Immigration and Nationality Act and its associated regulations;

c. to pay the back wages and CMPs, in accordance with the terms set forth in subparagraphs 8.d. - 8.f. below;

d. to cause all of the required payments to be delivered to United States Department of Labor, Wage and Hour Division, Regional Office, 90 Seventh St., Suite 13-100, San Francisco, California 94103, in the form of a cashier's check or money order with the firm's name, Peri & Sons Farms, Inc., written on it, payable to the order of the "Wage & Hour Div., Labor;"

e. to make the \$2,338,699.60 back wage payment not later than July 30, 2012. Additionally, Respondent Peri & Sons shall also write "Back Wages" on the check or money order in addition to the other written requirements denoted in Paragraph 8.d., *supra*;

f. to make the \$500,000 CMP payment not later than January 4, 2013.

Additionally, Respondent Peri & Sons shall also write "Civil Money Penalties" on the check or money order in addition to the other written requirements denoted in Paragraph 8.d., *supra*;

g. that it is presently, to the best of its knowledge, in compliance with the Act, the Fair Labor Standards Act ("FLSA"), the Migrant and Seasonal Agricultural Worker Protection Act ("MSPA"), and their implementing Regulations and Peri & Sons agrees to continue to be in compliance.

h. to provide to the Director of the Sacramento Office of the Wage and Hour Division, United States Department of Labor, semi-annual signed compliance certifications for four time periods: July 1, 2012 - December 31, 2012; January 1, 2013 - June 30, 2013; July 1, 2013 - December 31, 2013, and January 1, 2014 - June 30, 2014. These semi-annual signed statements shall be signed by an officer of the company and certify that Peri & Sons has reviewed their practices under the H-2A program during this period and, to the best of its knowledge, found that they are in compliance with the law. These semi-annual certifications shall be provided to the Sacramento Office of the Wage and Hour Division within two months of the end date of the certification period, i.e., by March 1, 2013, September 1, 2013, March 1, 2014, and September 1, 2014. This is a certification only and shall not be accompanied by other documents such as payroll documents. However, the Department reserves the right to request documents after reviewing a certification.

i. to list, from the date the Offices of the Administrative Law Judges approves these Consent Findings through June 30, 2014, in the worker's native language, the

following Wage and Hour information on any contracts that Respondent Peri & Sons provides to any H-2A worker or any corresponding U.S. worker: "If you have any questions regarding your wages or the terms and conditions of your employment, you may contact the Wage & Hour District Office, Alan Bible Federal Building, 600 Las Vegas Blvd. S., Suite 750, Las Vegas, NV 89101-6654 Telephone Number: (702) 388-6001." The contracts referenced above within this sub-paragraph are the contracts that Respondent Peri & Sons are required to provide H-2A workers and corresponding U.S. workers pursuant to 29 C.F.R. § 655.122(q);

j. to fully cooperate with the Wage and Hour Division in all future H-2A, MSPA and FLSA inspections, including a re-inspection that will be scheduled during the next peak onion harvest season between August and October 2012; and

k. to provide those addresses of record Peri & Sons has for the 1,365 employees entitled to back wages listed at Exhibit A attached hereto and to indicate which, if any, of these employees are presently employed or expected to be employed by Peri & Sons in August 2012. The list of names and addresses shall be provided to the Wage & Hour Division in electronic form in a file format compatible with MS-Excel.

9. In consideration of Respondent Peri & Sons' commitments herein and in paragraph 8 in particular, the Administrator agrees:

a. to amend the amended determination letters by reducing the total amount of back wages due in this matter to \$2,338,699.60 and by reducing the amount of CMPs due to \$500,000.00;

b. to provide annual H-2A, MSPA, and FLSA training in 2012 and 2013 to Respondent Peri & Sons' office staff, supervisors, superintendents, and foremen on a mutually agreed upon date; and

c. to answer inquiries from Respondent Peri & Sons in connection with issues that may arise under the H-2A regulations, MSPA, and the FLSA.

10. The Administrator shall allocate the \$2,338,699.60 in back wages to the 1,365 H-2A workers identified on Exhibit A attached hereto and made a part hereof, or to their estates if that be necessary, according to the amounts identified on Exhibit A. Any money not so paid to these H-2A workers within a period of three years from the date of receipt of the last such money due hereunder, because of an inability to locate the proper persons or because of their refusal to accept it, shall be then deposited by the Administrator in the Treasury of the United States pursuant to 28 U.S.C. §§ 2041 and 2042.

11. In view of the aforesaid agreements, Respondent Peri & Sons agrees to withdraw its request for a hearing.

12. Respondent Peri & Sons, without admitting to the allegations contained within the determination letters, agrees to the entry of these Consent Findings in settlement of this case without contest.

13. Each party agrees to bear its own costs, attorney's fees and other expenses incurred by such party in connection with any stage of this proceeding to date including, but not limited to, any and all costs referenced under the Equal Access to Justice Act, as amended.

14. Pursuant to 29 C.F.R. § 501.40(b), all parties further agree as follows:

- a. that the Order to be entered approving these Consent Findings shall have the same force and effect as an order made after full hearing;
- b. that the entire record on which the Order approving these Consent Findings is based shall consist solely of the amended written notice of determination and these Consent Findings;
- c. that the parties agree to waive any further procedural steps before the Administrative Law Judge and the Administrative Review Board regarding all matters which are the subject of these Consent Findings; and
- d. that the parties agree to waive any right to challenge or contest the validity of these Consent Findings and the Order entered in accordance with these findings.

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15. The Department of Labor's Office Of Administrative Law Judges shall retain jurisdiction of this case until the Administrator's counsel renders a status report to the Court that all of the payments referenced in paragraph 7 were received by the Wage and Hour Division. The Administrator's counsel shall file this status report with the Court within ten business days of the Wage and Hour Division receiving all of the required payments.

**UNITED STATES DEPARTMENT OF LABOR**

DATED: 6/8/12

M. Patricia Smith  
Solicitor of Labor

MARY K. ALEJANDRO  
Acting Regional Solicitor

DAVID KAHN  
Counsel for Employment Standards

By: Norman E Garcia  
NORMAN GARCIA  
Senior Trial Attorney

*Attorneys for the Administrator, Wage and Hour Division  
United States Department of Labor*

**PERI & SONS FARMS, INC.**

DATED: 5/25/12

By: Brad M. Johnston  
BRAD M. JOHNSTON

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*Attorney for the Respondent*

## SERVICE SHEET

Case Name: WAGE\_and\_HOUR\_DIVISI\_v\_PERI\_and\_SONS\_FARMS\_\_

Case Number: 2012TAE00005

Document Title: ORDER APPROVING CONSENT FINDINGS

I hereby certify that a copy of the above-referenced document was sent to the following this 3rd day of July, 2012:



**MAE WONG**  
LEGAL ASSISTANT

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